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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Michael T. Morman et al. Art Unit 3761
Serial No. 10/037,457
Filed December 31, 2001
Confirmation No. 4817
For ALL DIRECTION STRETCHABLE MULTILAYER DIAPER
Examiner Karin M. Reichle

AMENDED APPEAL BRIEF

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October 26, 2006

AMENDED APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-referenced application made in the final Office action dated March 31, 2006. A Notice of Appeal was filed on May 31, 2006.

This Amended Appeal Brief is being submitted in response to the Notification of Non-Complaint Appeal Brief dated October 16, 2006. Each of the deficiencies raised by the Examiner is addressed herein.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 45, 46, 50-68, 76-85, and 88-95 are currently pending for consideration in the application. Claims 1-44, 47-49, 69-75, 86, 87, and 96-98 have been cancelled. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 45, 46, 50-68, 76-85, and 88-95 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellants regard as the invention.

Claims 45, 46, 50-54, 56-65, 88-92, and 95 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,892,598 (Stevens '598).

Claims 88-90 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,756,709 (Stevens '709).

Claims 66-68, 76-85, 93, and 94 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stevens '598 in view of U.S. Patent Nos. 6,149,638 (Vogt et al.) and 5,486,166 (Bishop et al.).

Claim 55 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Stevens '598 in view of Vogt et al.

The rejections of claims 45, 46, 50-54, 56-68, 76-85, and 88-95 are being appealed as well as the rejection of claim 55 under 35 U.S.C. §112. The rejection of claim 55 under 35 U.S.C. §103(a) as being unpatentable over Stevens '598 in view of Vogt et al. is not being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the mailing of the final Office action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, claim 66 is directed to a disposable absorbent article 1 having a longitudinal axis and a lateral axis. See page 8, lines 8 and 9 and Fig. 1. The article 1 comprises a stretchable multilayer chassis 2 having an inner surface 11 and an outer surface 39. See page 8, lines 8 and 9, page 11, lines 27-29, and Fig. 2. The chassis 2 comprises an elastic chassis liner 10 defining the inner surface 11 of the chassis, and an elastic outer cover 17 secured to the chassis liner and defining the outer surface 39 of the chassis. See page 9, lines 7-9, page 12, lines 6, 7, and 13-15 and Fig. 2. The inner surface 11 and outer cover 17 are stretchable at least laterally. See page 12, lines 7, 8, and 13-15 and Fig. 2. An absorbent body 4 has an inner surface, an outer surface overlaying the inner surface 11 of the chassis 2, and longitudinal ends. See page 26, lines 9-10 and Figs. 1 and 2. The absorbent body 4 comprises an absorbent core 3, a tissue wrapsheet 60 wrapped about the absorbent core, a surge management layer 7, and an absorbent body liner 5 secured at least in part to the chassis liner 10. See page 28, lines 2 and 3 and Fig. 2. The absorbent body 4 is disposed between the absorbent body liner 7 and the chassis liner 10 with the surge management layer 7 disposed between the tissue wrapsheet 60 and the absorbent body liner 5. See page 28, lines 12-18 and Fig. 2. The absorbent body liner 5 extends longitudinally to the longitudinal ends of the absorbent body 4 and has an inner

surface and an outer surface facing the inner surface of the absorbent body. See page 26, lines 9 and 10 and Fig. 2. The inner surface of the absorbent body liner 5 is uncovered at the longitudinal ends of the absorbent body 4 to permit contact of the absorbent body liner with a wearer of the article 1 at the longitudinal ends of the absorbent body. See page 26, lines 15 and 16 and Fig. 2. The absorbent body liner 5 and absorbent body 4 are sized relative to the chassis 2 such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface 11 of the chassis with the wearer of the article 1. See page 12, lines 26-29 and Figs. 1 and 2.

Claim 88 is directed to a disposable absorbent article 1 comprising a stretchable multilayer chassis 2 having a longitudinal axis, a lateral axis, an inner surface 11, and an outer surface 39. See page 8, lines 8 and 9, page 11, lines 27-29, and Figs. 1 and 2. An elastic chassis liner 10 defines the inner surface 11 of the chassis 2 and is stretchable at least laterally. See page 12, lines 6-8 and 13-15 and Fig. 2. An elastic outer cover 17 is secured to the chassis liner 10 and defines the outer surface of the chassis. See page 12, lines 13-15 and Fig. 2. The outer cover 17 is stretchable at least laterally. See page 12, lines 13-15 and Fig. 2. An absorbent body 4 has an inner surface, an outer surface, and longitudinal ends. See page 26, lines 9-10 and Figs. 1 and 2. The absorbent body 4 is affixed along at least a portion of its outer surface to the inner surface 11 of the chassis 2 whereby the inner surface of the absorbent body 4 lies against a wearer of the article during use. See page 26, lines 15 and 16, page 28, lines 20-22 and Figs. 1 and 2. The chassis 2 is stretchable about the wearer independent of the absorbent body 4. See page

28, line 22 through page 29, line 1. At least two leg elastic members 6 are spaced laterally from each other and interposed between the elastic outer cover 17 and the elastic chassis liner 10. See page 11, lines 25-27 and Fig. 1.

Claim 95 is directed to a disposable absorbent article 1 comprising a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface 11, and an outer surface 39. See page 8, lines 8 and 9, page 11, lines 27-29 and Figs. 1 and 2. The chassis 2 is stretchable at least laterally. See page 19, lines 16-18. An absorbent body 4 has an inner surface, an outer surface facing the inner surface 11 of the chassis 2, and longitudinal ends. See page 26, lines 9-10, and Figs. 1 and 2. The absorbent body 4 is affixed along at least a portion of its outer surface to the inner surface 11 of the chassis 2 whereby the inner surface of the absorbent body 4 lies against a wearer of the article 1 during use. See page 26, lines 15 and 16, page 28, lines 20-22, and Figs. 1 and 2. The inner surface of the absorbent body 4 is uncovered at the longitudinal ends thereof to permit contact of the absorbent body with the wearer of the article 1 at the longitudinal ends of the absorbent body. See page 26, lines 15 and 16 and Fig. 2. The absorbent body 4 is sized relative to the chassis 2 such that a portion of the chassis is uncovered by the absorbent body to permit contact of the inner surface 11 of the chassis with the wearer of the article 1. See page 12, lines 26-29 and Figs. 1 and 2. The chassis 2 is stretchable about the wearer independent of the absorbent body 4. See page 28, line 22 through page 29, line 1.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejection of claims 45, 46, 50-68, 76-85, and 88-95 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

B. Appellants appeal the rejection of claims 66-68, 76-85, 93, and 94 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,892,598 (Stevens '598), in view of U.S. Patent Nos. 6,149,638 (Vogt et al.) and 5,486,166 (Bishop et al.).

C. Appellants appeal the rejection of claims 45, 46, 50-54, 56-65, 88-92, and 95 under 35 U.S.C. §102(b) as being anticipated by Stevens '598.

D. Appellants appeal the rejection of claims 88-90 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,756,709 (Stevens '709).

VII. ARGUMENT

A. Claims 45, 46, 50-68, 76-85, and 88-95 satisfy the requirements of 35 U.S.C. §112, second paragraph.

Claims 66, 67, 76-85, 93, and 94

On pages 2 and 3 of the final Office action, the Office again restates its previous §112 rejection of these claims based solely on the appellants' use of the phrase "affixed" in the claims, and in particular the phrase "affixed along at least a portion" in the claims. Appellants note, however, that independent claim 66 does not include the term "affixed" or any recitation of the absorbent body being affixed to the chassis. Likewise, claims 76-85, 93 and 94 which depend from claim 66 do not include the term "affixed." Moreover, claim 67, which also

depends from claim 66, does not include the phrase "affixed along at least a portion". Accordingly, the rejection of claims 66, 67, 76-85, 93 and 94 is submitted to be improper.

Claims 45, 46, 50-65, 68, 88-92, and 95

The Office maintains that the definition of "affixed" provided at page 6, lines 15-20 of the specification is contradictory to the use of the term "affixed" as it appears in the claims. In particular, the Examiner has objected to the recitation of an absorbent body being affixed "along at least a portion of its outer surface" to the inner surface of the chassis as recited in, for example, 68, 88, and 95 now on appeal.

At page 6, line 18 of the application, the specifications provides the following definition of the term "affixed:"

"As used herein, 'affixed' or 'bonded' refers to the joining, adhering, connecting, attaching, or the like, of two elements. The two elements will be considered to be bonded together when they are bonded directly to one another or indirectly to one another."

The Examiner's specific position is that this definition means that two elements are 100 percent affixed to each other regardless of whether adhesive (or other fastening components) is applied along the entire interfacing surfaces of the two elements or just a portion of the interfacing surfaces of the two elements. As such, according to the Examiner, the recitation of an absorbent body "affixed along at least a portion of its outer surface" to the chassis liner is an impossibility because it cannot be affixed only along a portion. Rather, the definition of "affixed" means that the entire outer surface of the absorbent body is affixed to the chassis liner

regardless of how much of the outer surface of the absorbent body actually has adhesive (or other fastening components) thereon.

Appellants submit that this is improper. In particular, the Examiner is charged with giving the claims their broadest reasonable interpretation ***consistent with the specification***. See M.P.E.P. §2111, citing *In re Hyatt*, 54 USPQ 1164, 1667 (Fed. Cir. 2000) (emphasis added). However, despite this charge, the Examiner in this case continues to divorce the definition of the term affixed set forth at page 6 of the application, from the entirety of the remaining disclosure and the terms surrounding the term "affixed" in the claims. That is, the Examiner considered the definition on page 6 of the application, and then considered the language recited in the claims (e.g., claim 68) and completely ignores the entire essence of the disclosure therebetween.

For example, at page 30, line 28 to page 31, line 2 the present specification clearly sets forth the drawback associated with conventional arrangements. This passage particularly states that "if the entire inner surface 9 of the absorbent body 4 is affixed or laminated to the inner surface 11 of the chassis 2, then the stretchable capacity of the surface area of the chassis 2 is reduced by the entire surface area 9 of the absorbent body 4." At page 31, lines 10-12, the present specification further notes that an attachment of the entire surface of the absorbent body 4 to the stretchable chassis 2 would greatly inhibit the biaxial stretch of the chassis 2.

Accordingly, as one aspect of the invention, the present specification teaches that "the surface area of the absorbent body 4 may be portionately attached to the stretchable multilayer chassis 2 in a cross-machine direction attachment

pattern, in a machine direction attachment pattern, or both." Page 31, lines 12-15. Thus, the specification is clearly disclosing that only a portion of the absorbent body may be attached to the chassis and be consistent with the definition of "affixed" set forth earlier in the specification.

Indeed, there are a number of additional statements made in the specification that further support this teaching. For example, page 31, lines 16-17 further discloses that the absorbent body may be attached to the stretchable chassis in a machine direction only line of attachment to inhibit stretch in the machine direction alone by "a portion of the surface area of the absorbent body 4 that is affixed to the stretchable chassis." This disclosure is entirely consistent with the definition of affixed provided at page 6 of the specification, with the two elements that are affixed being 1) a portion of the surface area of the absorbent body and 2) the stretchable chassis.

As additional evidence, appellants note page 31, lines 19-25 which discloses attachment of the absorbent body to the chassis in a cross-machine direction only line of attachment to inhibit stretch in the cross-machine direction only "by the portion of the surface area of the absorbent body 4 that is affixed to the stretchable chassis." See also page 31, lines 23-26, which teaches that the attachment of the absorbent body may also cover only a fraction of the surface area of the chassis, e.g., a 4 inch by 6 inch absorbent body may be attached on only a 2 inch by 4 inch rectangular area of the stretchable chassis. What this means is that the adhesive (or other fastening components) covers at most a 2 inch by 4 inch area of the absorbent body, and not the whole absorbent body. The recitation, e.g, in claim 68 that the absorbent body is affixed

"along at least a portion" is certainly consistent with this disclosure and with the definition of the term "affixed" provided at page 6 of the specification.

Most notable is the disclosure at page 31, lines 27-29 that "the surface area attachment of the non-stretch and/or low stretch absorbent body 4 to the surface area of the stretchable multilayer chassis 2 is preferably less than about 95%, more preferably less than about 50%, and even more preferably less than about 25%. Again, the specification further makes it clear that the definition of affixed is intended to include an embodiment in which the absorbent body is affixed along less than the entire surface area between it and the chassis. That is, the two elements that are affixed in this example are 1) the surface area of the absorbent body and 2) the surface area of the stretchable multilayer chassis.

Appellants submit that the use of the terms directly and indirectly in the definition of "affixed" set forth at page 6 of the specification is intended to mean that the two elements may be directly (e.g., surface to surface) affixed to each other, or there may be an intermediate element therebetween through which the two elements are affixed (e.g., each element being affixed directly to the intermediate element). Thus, in the embodiment shown in Fig. 2 of the application, the absorbent body 4 is affixed directly to the chassis 2 via an adhesive layer that extends across less than the full width of the absorbent body. The remaining surface area of the outer surface of the absorbent body 4 beyond the edge margins of the adhesive layer is unaffixed to the inner surface of the chassis 2 because they are not affixed, directly or via a third element therebetween.

In view of the above, Appellants respectfully submit that the Examiner's position is not a reasonable interpretation of

the phrase "affixed along at least a portion" as used, for example, in claims, 68, 88 and 95, consistent with the specification. Rather, such an interpretation completely ignores the specification with the exception of the definition set forth on page 6.

For these reasons, appellants respectfully request that the rejection of the claims under 35 U.S.C. §112 be withdrawn. Claims 45, 46, 50-65, 91, and 92, which depend from claim 95, and claims 89 and 90, which depend from claim 88, are submitted to be in compliance with 35 U.S.C. §112 for the same reasons as claims 95 and 88, respectively.

B. Claims 66-68, 76-85, 93, and 94 are submitted to be non-obvious in view of and patentable over U.S. Patent No. 4,892,598 (Stevens '598), in view of U.S. Patent Nos. 6,149,638 (Vogt et al.) and 5,486,166 (Bishop et al.)

Claim 66 is directed to a disposable absorbent article having a longitudinal axis and a lateral axis. The absorbent article comprises:

a stretchable multilayer chassis having an inner surface and an outer surface, said chassis comprising:

an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally; and

an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

an absorbent body having an inner surface, an outer surface overlaying the inner surface of the chassis, and longitudinal ends, the absorbent body comprising:

an absorbent core;

a tissue wrapsheet wrapped about the absorbent core; and

a surge management layer; and

an absorbent body liner secured at least in part to the chassis liner, said absorbent body being disposed between the absorbent body liner and the chassis liner with the surge management layer disposed between the tissue wrapsheet and the absorbent body liner;

the absorbent body liner extending longitudinally to the longitudinal ends of the absorbent body and having an inner surface and an outer surface facing the inner surface of the absorbent body, said inner surface of the absorbent body liner being uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body, the absorbent body liner and absorbent body being sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

Claim 66 is submitted to be nonobvious in view of and patentable over the references of record, and in particular U.S. Patent No. 4,892,598 (Stevens '598), in combination with U.S. Patent Nos. 6,149,638 (Vogt et al.) and 5,486,166 (Bishop et al.), in that the references fail to show or suggest an absorbent article comprising an absorbent body being affixed along at least a portion of its outer surface to the inner surface of a stretchable chassis and an absorbent body liner having an inner surface that is uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body and wherein the absorbent body liner and absorbent body are sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner

and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

Stevens '598 discloses a diaper garment 10 having an absorbent insert 32 held in registration with the outer cover 12 of the garment. In all of the embodiments except for Figs. 3A and 19C of Stevens '598, the longitudinal ends of the outer cover 12 are folded over upon the inner surface of the outer cover and cooperating opposed button or snap type fasteners are secured to the outer cover. The longitudinal ends of the absorbent insert 32 have slots (e.g., slots 50 in Fig. 3) formed therein to permit the opposed fasteners to pass therethrough to secure the absorbent insert in place on the outer cover. As is clearly seen in Figs. 2, 2A, 9-12, 14, 15, 19A and 19B, the ends of the absorbent insert are disposed within the folded ends of the outer cover. Accordingly, Stevens '598 fails to teach or suggest an absorbent body liner having an inner surface that is uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body and wherein the absorbent body liner and absorbent body are sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

As noted in the final Office action, Stevens '598 fails to disclose a surge layer disposed between the absorbent body liner and a wrapsheet that wraps about an absorbent core of the absorbent body.

As a result, the Examiner relies on Vogt et al. and Bishop et al. as providing sufficient disclosure to render it obvious to provide a surge layer between the absorbent body liner and a

wrapsheet of the absorbent body. See page 7, paragraph 9 of the final Office action. Neither of these references, however, discloses such an arrangement nor provides any motivation for arranging the surge layer, absorbent body liner and wrapsheet in the recited manner. In any event, both Vogt et al. and Bishop et al. clearly fail to show or otherwise even suggest an absorbent body liner having an inner surface that is uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body and wherein the absorbent body liner and absorbent body are sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article. Note, for example, that the bodyside liner 24 of the absorbent article disclosed by Vogt et al. covers the entire inner surface of the outer cover.

Since each of the cited references fails to disclose such a feature, a combination of the references also fails to disclose this feature. For these reasons, claim 66 is submitted to be patentable over the references of record.

Claims 67, 68, 76-85, 93 and 94 depending directly or indirectly from claim 66, are submitted to be patentable over the references of record for the same reasons as claim 66.

C. Claims 45, 46, 50-54, 56-65, 88-92 and 95 are submitted to be unanticipated by U.S. Patent No. 4,892,598 (Stevens '598)

Claims 45, 46, 50-54, 56-65, and 95

Claim 95 is directed to a disposable absorbent article comprising:

a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, and an outer surface;

said chassis being stretchable at least laterally; and

an absorbent body having an inner surface, an outer surface facing the inner surface of the chassis, and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, the inner surface of the absorbent body being uncovered at the longitudinal ends thereof to permit contact of the absorbent body with the wearer of the article at the longitudinal ends of the absorbent body, the absorbent body being sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body to permit contact of the inner surface of the chassis with the wearer of the article, said chassis being stretchable about the wearer independent of the absorbent body.

Claim 95 is submitted to be unanticipated by and patentable over Stevens '598 in that the reference fails to show or suggest a disposable absorbent article comprising an absorbent body affixed along at least a portion of its outer surface to the inner surface of the chassis, whereby the inner surface of the absorbent body lies against a wearer of the article during use, the inner surface of the absorbent body is uncovered at the longitudinal ends thereof to permit contact of the absorbent body with the wearer of the article at the longitudinal ends of the absorbent body, and the absorbent body is sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

Stevens '598 discloses a diaper garment 10 having an absorbent insert 32 held in registration with the outer cover 12 of the garment. In all of the embodiments except for Figs. 3A and 19C of Stevens '598, the longitudinal ends of the outer

cover 12 are folded over upon the inner surface of the outer cover and cooperating opposed button or snap type fasteners are secured to the outer cover. The longitudinal ends of the absorbent insert 32 have slots (e.g., slots 50 in Fig. 3) formed therein to permit the opposed fasteners to pass therethrough to secure the absorbent insert in place on the outer cover. As is clearly seen in Figs. 2, 2A, 9-12, 14, 15, 19A and 19B, the ends of the absorbent insert are disposed within the folded ends of the outer cover. Accordingly, the inner surface of the absorbent insert is covered at the longitudinal ends of the insert, and not uncovered as recited in claim 95.

In the embodiments of Figs. 3A and 19C of Stevens '598, instead of the ends of the outer cover being folded, a separate strip of material (e.g., strip 58 in Figs. 3A and 19C) has one set of fasteners secured thereto and covers the ends of the absorbent insert 32 for engaging the fasteners with the fasteners on the outer cover. As such, again the inner surface of the absorbent insert is covered, instead of uncovered, at the longitudinal ends of the insert.

Stevens '598 thus fails to anticipate claim 95. Accordingly, claim 95 is submitted to be unanticipated by and patentable over Stevens '598.

Claims 45, 46, 50-54, and 56-65 depend directly or indirectly from claim 95 and are submitted to be patentable over the references of record for the same reasons as claim 95.

Claims 88 and 90

Claim 88 is directed to a disposable absorbent article comprising:

a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, an outer surface, an elastic chassis liner defining the inner surface of the

chassis and being stretchable at least laterally, and an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

an absorbent body having an inner surface, an outer surface and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, said chassis being stretchable about the wearer independent of the absorbent body; and

at least two leg elastic members spaced laterally from each other and interposed between the elastic outer cover and the elastic chassis liner.

Claim 88 is submitted to be unanticipated by and patentable over U.S. Patent No. 4,892,598 (Stevens '598) because the reference fails to show or suggest a disposable absorbent article having at least the following:

i) a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, an outer surface, an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally, and an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

ii) an absorbent body having an inner surface, an outer surface and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use,

said chassis being stretchable about the wearer independent of the absorbent body; and

iii) at least two leg elastic members spaced laterally from each other and interposed between the elastic outer cover and the elastic chassis liner.

In particular, Stevens '598 fails to teach a disposable absorbent article having at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner. Rather, Stevens '598 discloses elastic members 62 adhered directly to the inner surface of the outer cover. See, e.g., Figs. 2 and 3 of Stevens '598.

U.S. Patent No. 4,701,172 (Stevens '172), which is incorporated by reference into Stevens '598 and cited by the Examiner, also fails to disclose a disposable absorbent article having at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner. Instead, Stevens '172 discloses that elastic members 58, 60, and 62 are interposed between folded over portions (i.e., hems 24, 26, 28) of the outer cover 12. See Figures 11 and 12. Nowhere does Stevens '172 disclose that the elastic members 58, 60, and 62 are interposed between the outer cover 12 and a liner.

Accordingly, Stevens '598 fails to disclose at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner as recited in claim 88.

For at least these reasons, claim 88 is submitted to be patentable over the references of record.

Claim 90 depends directly from claim 88 and is submitted to be patentable over the references for the same reasons as claim 88.

Claim 89

Claim 89 depends from claim 88 and further recites that the absorbent article also comprises at least one waist elastic member extending longitudinally substantially less than the length of the chassis and interposed between the elastic outer cover and the elastic chassis liner.

The at least one waist elastic member recited in claim 89 is not a layer of a multiple layer outer cover, e.g., superposed over the entire surface of other layers of the outer cover. Rather the length of the at least one waist elastic member (e.g., as measured in the longitudinal direction of the article, i.e., the width direction of the waist elastic member) is less than the length of the article.

Like the leg elastic members of Stevens '598, the waist elastic member disclosed in Stevens '598 is also adhered to the inner surface of the outer cover and is not interposed between an elastic outer cover and an elastic chassis liner as recited in claim 89. Furthermore, as mentioned above, the elastic members 58, 60, and 62 disclosed in Stevens '172 are interposed between folded over portions (i.e., hems 24, 26, 28) of the outer cover 12. Nowhere does Stevens '172 disclose that the elastic member 58, 60, and 62, are interposed between the outer cover 12 and a liner.

For these additional reasons, claim 89 is submitted to be patentable over the references of record.

Claims 91 and 92

Claims 91 and 92 depend indirectly from claim 95 and further recite, respectively, the at least two leg elastic members interposed between the outer cover and the chassis liner and the waist elastic member interposed between the outer cover and the chassis similar to the recitations of claims 88 and 89. Accordingly, claims 91 and 92 are further submitted to be unanticipated by and patentable over Stevens '598 for substantially the same reasons as claims 88 and 89, respectively.

D. Claims 88-90 are submitted to be unanticipated by U.S. Patent No. 4,756,709 (Stevens '709).

Claims 88 and 90

Claim 88 is also submitted to be unanticipated by and patentable over U.S. Patent No. 4,756,709 (Stevens '709), in that the reference fails to show or suggest a disposable absorbent article having at least the following:

i) a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, an outer surface, an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally, and an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

ii) an absorbent body having an inner surface, an outer surface and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use,

said chassis being stretchable about the wearer independent of the absorbent body; and

iii) at least two leg elastic members spaced laterally from each other and interposed between the elastic outer cover and the elastic chassis liner.

In particular, Stevens '709 fails to teach a disposable absorbent article having at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner. Rather, Stevens '709 teaches placing leg elastic members on the inner surface of the outer cover (see, e.g., elastic members 62 in Figs. 11 and 12). As such, the side edges of the outer cover must be folded inward over the leg elastic members. Accordingly Stevens '709 fails to disclose at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner as recited claim 88.

For at least these reasons, claim 88 is submitted to be patentable over the references of record.

Claim 90 depends directly from claim 88 and is submitted to be patentable over the references for the same reasons as claim 88.

Claim 89

Claim 89 depends from claim 88 and further recites that the absorbent article also comprises at least one waist elastic member extending longitudinally substantially less than the length of the chassis and interposed between the elastic outer cover and the elastic chassis liner.

Like the leg elastic members of Stevens '709, the waist elastic member disclosed in Stevens '709 is also adhered to the inner surface of the outer cover and is therefore not interposed

between an elastic outer cover and an elastic chassis liner as recited in claim 89.

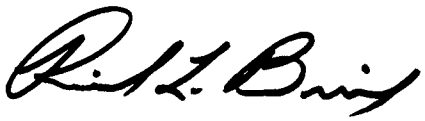
For these additional reasons, claim 89 is submitted to be patentable over the references of record.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 45, 46, 50-68, 76-85, and 88-95 be allowed.

While no fee is believed due at this time, the Commissioner is authorized to charge any fee due to Deposit Account No. 19-1345 in the name of Senniger, Powers.

Respectfully submitted,



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RLB/PEB/bcw

IX. CLAIMS APPENDIX

45. The disposable absorbent article set forth in claim 95 wherein said article is a diaper.

46. The disposable absorbent article set forth in claim 95 wherein the absorbent body is affixed to the stretchable multilayer chassis in a lateral attachment pattern.

50. The disposable absorbent article set forth in claim 95 wherein the stretchable multilayer chassis comprises a chassis liner and an outer cover, said chassis liner defining the inner surface of said chassis and said outer cover defining the outer surface of said chassis.

51. The disposable absorbent article set forth in claim 50, wherein the chassis liner and the outer cover are each extensible.

52. The disposable absorbent article set forth in claim 50 wherein the chassis liner and the outer cover are each elastic.

53. The disposable absorbent article set forth in claim 50 wherein the chassis liner is extensible and the outer cover is elastic.

54. The disposable absorbent article set forth in claim 50 wherein the chassis liner is elastic and the outer cover is extensible.

55. The disposable absorbent article set forth in claim 50 wherein the chassis liner comprises a neck-stretched, spunbond web.

56. The disposable absorbent article set forth in claim 50 wherein the outer cover comprises an elastic material that is stretchable both laterally and longitudinally by about 25% to about 125%.

57. The disposable absorbent article set forth in claim 50 wherein the outer cover comprises an elastic material that is stretchable both laterally and longitudinally by about 100% to about 200%.

58. The disposable absorbent article set forth in claim 50 wherein the outer cover comprises an elastic material that is stretchable both laterally and longitudinally by about 150% to about 250%.

59. The disposable absorbent article set forth in claim 50 wherein the outer cover comprises polypropylene spunbond material laminated with styrene-isoprene-styrene-based adhesive.

60. The disposable absorbent article set forth in claim 50 wherein the outer cover comprises at least one of the following: a microporous polymer film, a nonwoven fabric, a spunbonded laminate, a meltblown laminate, a spunbond-meltblown-spunbond laminate, and a stretch-bonded laminate.

61. The disposable absorbent article set forth in claim 50 wherein the outer cover comprises a thermoplastic nonwoven web made from a stretchable polymer.

62. The disposable absorbent article set forth in claim 61 wherein the stretchable polymer is selected from the

following: polyolefins, polyethylene, heterophasic polymers, olefin polymers and multi-block elastomeric copolymers.

63. The disposable absorbent article set forth in claim 95 wherein the absorbent body comprises at least an absorbent core.

64. The disposable absorbent article set forth in claim 63 wherein the absorbent body further comprises at least one of a tissue wrapsheet and an absorbent body liner.

65. The disposable absorbent article set forth in claim 63 wherein the absorbent core comprises a matrix of hydrophilic fibers and superabsorbent material.

66. A disposable absorbent article having a longitudinal axis and a lateral axis, said article comprising:

a stretchable multilayer chassis having an inner surface and an outer surface, said chassis comprising:

an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally; and

an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

an absorbent body having an inner surface, an outer surface overlaying the inner surface of the chassis, and longitudinal ends, the absorbent body comprising:

an absorbent core;

a tissue wrapsheet wrapped about the absorbent core; and

a surge management layer; and

an absorbent body liner secured at least in part to the chassis liner, said absorbent body being disposed between the absorbent body liner and the chassis liner with the surge management layer disposed between the tissue wrapsheet and the absorbent body liner;

the absorbent body liner extending longitudinally to the longitudinal ends of the absorbent body and having an inner surface and an outer surface facing the inner surface of the absorbent body, said inner surface of the absorbent body liner being uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body, the absorbent body liner and absorbent body being sized relative to the chassis such that a portion of the chassis is uncovered by

the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

67. The disposable absorbent article set forth in claim 66 wherein the absorbent body is affixed to the stretchable multilayer chassis in a lateral attachment pattern.

68. The disposable absorbent article set forth in claim 66 wherein the absorbent body is affixed along at least a portion of its outer surface to the chassis liner.

76. The disposable absorbent article set forth in claim 66 wherein the chassis liner comprises a neck-stretched, spunbond web.

77. The disposable absorbent article set forth in claim 66 wherein the outer cover comprises an elastic material that is stretchable both laterally and longitudinally by about 25% to about 125%.

78. The disposable absorbent article set forth in claim 66 wherein the outer cover comprises an elastic material that

is stretchable both laterally and longitudinally by about 100% to about 200%.

79. The disposable absorbent article set forth in claim 66 wherein the outer cover comprises an elastic material that is stretchable both laterally and longitudinally by about 150% to about 250%.

80. The disposable absorbent article set forth in claim 66 wherein the outer cover comprises polypropylene spunbond material laminated with styrene-isoprene-styrene-based adhesive.

81. The disposable absorbent article set forth in claim 66 wherein the outer cover comprises at least one of the following: a microporous polymer film, a nonwoven fabric, a spunbonded laminate, a meltblown laminate, a spunbond-meltblown-spunbond laminate, and a stretch-bonded laminate.

82. The disposable absorbent article set forth in claim 66 wherein the outer cover comprises a thermoplastic nonwoven web made from a stretchable polymer.

83. The disposable absorbent article set forth in claim 82 wherein the stretchable polymer is selected from the following: polyolefins, polyethylene, heterophasic polymers, olefin polymers and multi-block elastomeric copolymers.

84. The disposable absorbent article set forth in claim 66 wherein the absorbent body comprises at least one of a non-stretch material and a low stretch material.

85. The disposable absorbent article set forth in claim 66, wherein the absorbent core comprises a matrix of hydrophilic fibers and superabsorbent fibers.

88. A disposable absorbent article comprising:

a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, an outer surface, an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally, and an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

an absorbent body having an inner surface, an outer surface and longitudinal ends, said absorbent body being

affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, said chassis being stretchable about the wearer independent of the absorbent body; and

at least two leg elastic members spaced laterally from each other and interposed between the elastic outer cover and the elastic chassis liner.

89. The disposable absorbent article set forth in claim 88 further comprising at least one waist elastic member extending longitudinally substantially less than the length of the chassis and interposed between the elastic outer cover and the elastic chassis liner.

90. The disposable absorbent article set forth in claim 88 wherein the inner surface of the absorbent body is free from contact with the chassis at the longitudinal ends of the absorbent body.

91. The disposable absorbent article set forth in claim 50 further comprising at least two leg elastic members spaced

laterally from each other and interposed between the outer cover and the chassis liner.

92. The disposable absorbent article set forth in claim 50 further comprising at least one waist elastic member extending longitudinally substantially less than the length of the chassis and interposed between the outer cover and the chassis liner.

93. The disposable absorbent article set forth in claim 66 further comprising at least two leg elastic members spaced laterally from each other and interposed between the outer cover and the chassis liner.

94. The disposable absorbent article set forth in claim 66 further comprising at least one waist elastic member extending longitudinally substantially less than the length of the chassis and interposed between the outer cover and the chassis liner.

95. A disposable absorbent article comprising:

a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, and an outer surface; said chassis being stretchable at least laterally; and

an absorbent body having an inner surface, an outer surface facing the inner surface of the chassis, and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, the inner surface of the absorbent body being uncovered at the longitudinal ends thereof to permit contact of the absorbent body with the wearer of the article at the longitudinal ends of the absorbent body, the absorbent body being sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body to permit contact of the inner surface of the chassis with the wearer of the article, said chassis being stretchable about the wearer independent of the absorbent body.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.